

July 7, 2016

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**VIA EMAIL AND US MAIL**

Dennis McLerran, Regional Administrator  
EPA - Region 10  
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Seattle, WA 98101

Edward J. Messina, Director  
Monitoring, Assistance, and Media Programs Divisions, US EPA  
1200 Pennsylvania Avenue, N. W.  
Washington, DC 20460

**Re: Request for Applicability Determination of NESHAP Subpart 6S**

Dear Mr. McLerran and Mr. Messina:

This request arises from a recent Oregon Department of Environmental Quality (“DEQ”) decision to regulate glass-making furnaces owned and operated by Bullseye Glass Company (“Bullseye”) under the National Emission Standards for Hazardous Air Pollutants (“NESHAPS”) for Glass Manufacturing Area Sources, 40 CFR Part 63, Subpart SSSSSS (“Subpart 6S”). DEQ’s decision relied on an April 12, 2016, letter (“Interpretation Letter”) from E.J. Messina, Director of U.S. Environmental Protection Agency (“EPA”) Monitoring, Assistance, and Media Programs Division to J. Hammond, Deputy Director of DEQ.<sup>1</sup>

The Interpretation Letter contradicts EPA’s long-standing position that Subpart 6S applies only to “continuous” furnaces, continuously charged, melting and producing glass. The docket for the rule indicates that EPA never intended for Subpart 6S to apply to “periodic” furnaces, which make glass in discrete batches on a periodic basis. Accordingly, Bullseye respectfully requests EPA withdraw the Interpretation Letter and confirm its long-standing position that Subpart 6S applies only to continuous furnaces.

EPA’s Interpretation Letter prematurely purports to determine an issue which can only be done through formal rulemaking. If EPA wants to reinterpret Subpart 6S to include other types of furnaces, EPA should commence formal rulemaking to do so. Formal rulemaking would ensure that EPA meets the statutory criteria for developing emissions limits pursuant to Section 112(d) of the Clean Air Act. Formal rulemaking would also ensure uniform application of Subpart 6S.

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<sup>1</sup> A copy of EPA’s April 12, 2016 letter to DEQ is attached as Exhibit A.

## **A. Background**

On March 9, 2016, without notifying Bullseye, DEQ sent an Applicability Determination Request to EPA. In the request, DEQ said it was “reevaluating the applicability of [Subpart 6S] to two specific Portland glassmaking facilities” including Bullseye. Specifically, DEQ sought an interpretation of whether Bullseye’s furnaces were continuous furnaces as defined in 40 C.F.R. § 63.11459. DEQ suggested to EPA that Bullseye’s furnaces were continuous furnaces because they were kept “hot” during their 300-500 day service life, regardless of whether they continuously contained or continuously made glass.

On April 12, 2016, EPA responded in the Interpretation Letter that based on DEQ’s description of the operation of Bullseye’s furnaces and information gathered by EPA, EPA believed that Bullseye’s furnaces were subject to Subpart 6S. EPA did not contact Bullseye, request any additional information from Bullseye or give Bullseye an opportunity to respond.

On April 13, 2016 (one day after receiving EPA’s letter), DEQ advised Bullseye that based on EPA’s Interpretation Letter, Subpart 6S applied to Bullseye’s furnaces.<sup>2</sup> Two days later, DEQ initiated an enforcement action against Bullseye for failing to apply for a Title V permit by December 28, 2010 in violation of 40 CFR § 63.11449(e) and OAR 340-218-0040(l)(a)(A).<sup>3</sup> DEQ further posited that Bullseye may be in violation of other provisions in Subpart 6S because Bullseye has furnaces regulated by Subpart 6S. DEQ acknowledged that its determination, and subsequent enforcement action, were based upon EPA’s Interpretation Letter.

## **B. Development of Subpart 6S**

In 2004, EPA began to evaluate emissions from large-scale glass manufacturers of products like plate glass, bottles and auto windshields. EPA sent information requests to large-scale glass manufacturers inquiring about manufacturing processes and air emissions at their respective facilities. *See e.g.* EPA-HQ-OAR-2006-0360-0069; EPA-HQ-OAR-2006-0360-0034; EPA-HQ-OAR-2006-0360-0053; EPA-HQ-OAR-2006-0360-0032. EPA sent no information requests to colored art glass manufacturers such as Bullseye.

From the information received by the large-scale glass manufacturers, EPA developed an emission inventory, and in 2007 proposed a NESHAP for Glass Manufacturing Area Sources, (the “Proposed Rule”). EPA predicted that the Proposed Rule would affect only three facilities, none of which were colored art glass manufacturers. EPA-HQ-OAR-2006-0360-0045; EPA-HQ-OAR-2006-0360-0082.

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<sup>2</sup> A copy of DEQ’s April 13, 2016 letter is attached as Exhibit B.

<sup>3</sup> A copy of DEQ’s Pre-Enforcement Notice is attached as Exhibit C.

In response to the Proposed Rule, Bullseye and other colored art glass manufacturers raised concerns that the rule could be interpreted to apply to any glass manufacturing facility producing at least 50 tons per year of glass containing any of the six metal hazardous air pollutants (“HAPs”) covered under the rule. 72 Fed. Reg. 53838, 53843 (Sept. 20, 2007). Specifically, Bullseye and other colored art glass manufacturers sent written comments to EPA and engaged in telephone discussions with Susan Fairchild, in EPA’s Emissions Standards Division. *See e.g.* EPA-HQ-OAR-2006-0360-0090; EPA-HQ-OAR-2006-0360-0103.

In their comments and discussions with Ms. Fairchild, Bullseye and other colored art glass manufacturers explained the difference between periodic and the continuous glass making furnaces that the Proposed Rule was designed to regulate. *See* EPA-HQ-OAR-2006-0360-0103. As described in the comments, continuous furnaces are continuously charged with raw materials, continuously melt glass at constant temperature and continuously produce large quantities of glass at the furnace exit. Once started, continuous furnaces can produce glass non-stop for 5-15 years, subject only to “maintenance, malfunction, control device installation, reconstruction or rebuilding,” as specified in the Final Rule. Continuous furnaces typically have melting capacities (i.e. production rates) from approximately 20 to more than 700 *tons* per day.

In contrast, periodic furnaces make glass in small discrete batches, typically between 500-1,000 *pounds* per day. In periodic furnaces, each raw material batch is mixed independently using a different formula depending on the type of glass to be produced. Each batch is separately heated to a specified temperature and melted over an 8-14 hour time period, then fined, homogenized and cooled down. Periodic furnaces typically produce hand-made glass because these furnaces allow glass manufacturers to use different glass formulas and different melting/cooling cycles to make a variety of artisanal glasses. Once fired, operating efficiency and durability typically require such furnaces to be kept hot throughout their 300-500 day working life. Repeated cooling and heating cycles stress, degrade and shorten their working life, but periodic furnaces do not make glass continuously between batches.

Bullseye also commented that EPA had not fully evaluated the impacts of the Proposed Rule on colored art glass manufacturers since EPA had neither collected nor evaluated such information. EPA-HQ-OAR-2006-0360-0090. Bullseye specifically noted that, “[t]he testing and monitoring of furnace activities would need to consider the varied production cycles that are typical in [the colored art glass] industry.” EPA-HQ-OAR-2006-0360-0090.

Responding directly to the comments of Bullseye and other small colored art glass manufacturers, EPA clarified that small colored art glass manufacturers using periodic furnaces would not be regulated under the Final Rule. 72 Fed. Reg. 73180, 73186 (Dec. 26, 2007). EPA stated, “we have concluded that the glass manufacturing area source category was listed based on emissions from relatively large manufacturing plants that operated continuous glass furnaces.” *Id.* EPA specified that periodic furnaces and pot furnaces would not be subject to the Final Rule.

*Id.* In the Final Rule, EPA does not clarify or explain that periodic or pot furnaces that are continuously on are continuous furnaces subject to the rule.

In April 2008, EPA issued a Summary of Regulations Controlling Air Emissions from the Glass Manufacturing Industry (the “Summary”). The Summary clarified that EPA designed the Final Rule to affect large manufacturers not small colored art glass manufacturers. *See* EPA, Summary of Regulations Controlling Air Emissions from the Glass Manufacturing Industry, NESHAPS, Final Rule (April 2008). Notably, EPA repeated its original expectation that only three large glass-bottling plants would require additional controls to comply with the Final Rule. *Id.* This expectation would have been nonsensical were the Final Rule intended to apply to the periodic furnaces used by small colored art glass manufacturers.

Consistent with the above, from the final rule’s 2008 enactment until April 2016, neither EPA, DEQ, nor any of the various state environmental agencies charged with enforcing the Clean Air Act (“CAA”), suggested Subpart S6 applied to colored art glass manufacturers like Bullseye. In particular, in 2011, when DEQ most recently renewed Bullseye’s minor source air permit, DEQ specifically concluded that Subpart 6S did not apply to Bullseye because Bullseye only operates periodic furnaces. *See* Air Contaminant Discharge Permit No.: 26-3135-ST-01.

## **C. Discussion**

Bullseye requests that EPA withdraw its Interpretation Letter and confirm its long-standing interpretation of Subpart 6S for three reasons. First, the Interpretation Letter is inconsistent with Subpart 6S. Second, EPA’s decision to change its interpretation of Subpart 6S through an Interpretation Letter does not comport with the requirements of the Administrative Procedures Act and the CAA. Last, the Interpretation Letter may result in inconsistent application of Subpart 6S nationwide. DEQ is relying solely on the Interpretation Letter for enforcement against Bullseye that threatens the viability of a company that employs 150+ people and has been a business in good standing for over 42 years. If EPA chooses to reinterpret Subpart 6S, EPA should commence formal rulemaking to do so.

### **1. The Interpretation Letter is inconsistent with Subpart 6S because Subpart 6S applies only to furnaces that are continuously melting and producing glass.**

The requirements set forth in Subpart 6S do not apply to Bullseye because Bullseye’s furnaces are not continuous furnaces. In order for a facility to be regulated under Subpart 6S, it must produce glass in at least one continuous furnace. 40 C.F.R. § 63.11448. A continuous furnace is defined as “a glass manufacturing furnace that operates continuously except during periods of maintenance, malfunction, control device installation, reconstruction, or rebuilding.” *Id.* § 63.11459. EPA specifically stated that Subpart 6S does **not** apply to periodic and pot

furnaces. 72 Fed. Reg. 73180, 73186 (Dec. 26, 2007). In the preamble to Subpart 6S, EPA did not state that it would regulate periodic and pot furnaces that were continuously kept hot. *See id.*

The rulemaking docket for Subpart 6S demonstrates that EPA understood both how the glass manufacturing industry defined the term continuous furnace and the distinction between continuous and periodic furnaces in the glass making industry. *See* EPA-HQ-OAR-2006-0360-0025; EPA-HQ-OAR-2006-0360. The term continuous furnace has an agreed upon technical meaning in the glass manufacturing industry. *See* EPA-HQ-OAR-2006-0360-0025 (“[f]or most commercial glasses, large-scale, continuous furnaces are currently used for melting, refining, and homogenization of soda-lime, borosilicate, lead crystal and crystal glasses. The conventional method of providing heat to melt glass is to burn fossil fuel above a batch of continuously fed material and draw molten glass continuously from the furnace.”) ; *see also* Mathieu Hubert, PhD, *CelSian Glass & Solar, Processing in Glass* (2015) (describing the differences between periodic and continuous glass production furnaces).<sup>4</sup>

Further, the docket and rule shows that EPA intended to regulate only glass manufacturers with furnaces that continuously produce glass, not small colored art glass manufacturers producing batches of glass periodically. In 2007, EPA concluded that Subpart 6S would not apply to Bullseye’s furnaces because they were periodic furnaces. 72 Fed. Reg. 73180, 73186 (Dec. 26, 2007). Bullseye was completely open with EPA about its furnaces and operations, and has never attempted to mischaracterize or obscure the nature of its operations. Since Subpart 6S was enacted in 2007, no relevant aspect of Bullseye’s manufacturing process has changed.

Bullseye, and other colored art glass manufacturers with periodic furnaces, relied upon EPA’s original interpretation that the regulation was intended to only apply to furnaces that continuously produce glass containing one or more the six metal HAPs. As recently as June 20th of this year, the Supreme Court emphasized that an agency must “be cognizant that longstanding policies may have ‘engendered serious reliance interests that must be taken into account.’” *Encino Motorcars, LLC v. Navarro*, No. 15-415, 2016 WL 3369424, at \*7 (U.S. June 20, 2016) (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)). Where there are serious reliance interests at stake, the Court indicated that it will invalidate agency action when an agency changes its position without a reasoned explanation. *Id.* Here, Bullseye, and other colored art glass manufacturers with periodic furnaces, relied on EPA’s interpretation of Subpart 6S. EPA has not justified any reason for its new interpretation or considered the reliance interests of the colored art glass manufacturers. As such, EPA should withdraw the Interpretation Letter.

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<sup>4</sup> This presentation is available at:  
[http://www.lehigh.edu/imi/teched/GlassProcess/Lectures/Lecture03\\_Hubert\\_industglassmeltfurnaces.pdf](http://www.lehigh.edu/imi/teched/GlassProcess/Lectures/Lecture03_Hubert_industglassmeltfurnaces.pdf).

**2. EPA's decision to change its interpretation of Subpart 6S through Interpretation Letter does not comport with the requirements of the Administrative Procedures Act and the Clean Air Act.**

To regulate HAPs emissions from glass manufacturers using periodic furnaces, EPA must commence formal rulemaking to meet the requirements of the federal Administrative Procedure Act ("APA") and the CAA.

**a. The Administrative Procedure Act**

Under the APA, "it is well-established that an agency may not escape the notice and comment requirements...by labeling a major substantive legal addition to a rule a mere interpretation." *Appalachian Power Co. v. U.S. Env'tl. Prot. Agency*, 208 F.3d 1015, 1024 (D.C. Cir. 2000) (citing *Paralyzed Veterans v. D.C. Arena L.P.*, 117 F.3d 579, 588 (D.C. Cir. 1997); *American Mining Congress v. MSHA*, 995 F.2d 1106, 1109–10 (D.C. Cir. 1993)). The primary criterion used to determine whether an administrative agency action constitutes a legislative rule or a policy statement is whether the document expresses a change in policy which the agency intends to make binding. *Gen. Elec. Co. v. U.S. Env'tl. Prot. Agency*, 290 F.3d 377, 38283 (D.C. Cir. 2002); *see also Community Nutrition Inst. v. Young*, 818 F.2d 943, 946 (D.C. Cir. 1987). "Courts often infer the intent behind an action from the action's foreseeable effects." *Chamber of Commerce of the U.S. v. OSHA*, 636 F.2d 464, 468 n. 7 (D.C. Cir. 1980). Further, if an agency bases enforcement actions on the policy statement, the policy statement is for all practical purposes "binding." *Appalachian Power Co.*, 208 F.3d at 1021.

Since 2007, when EPA promulgated Subpart 6S, facilities with periodic furnaces (regardless of whether the furnaces were continuously on) have not been regulated under Subpart 6S. In the rule, EPA did not include periodic furnaces that are continuously on within the definition of a continuous furnace. By reinterpreting the term continuous furnace to include periodic furnaces that are continuously on, EPA has expanded the scope of Subpart 6S. This is a substantive change in the scope of the applicability of Subpart 6S that will have impacts on colored art glass manufacturers throughout the nation.

EPA's attempt to describe its Interpretation Letter as "non-binding" is unavailing and misleading. Immediately after DEQ received EPA's Interpretation Letter, in which EPA broadened the scope of Subpart 6S, DEQ sent a letter to Bullseye informing the company that it was now subject to the requirements of Subpart 6S. Moreover, only a few days later, DEQ initiated an enforcement action against Bullseye for its alleged violations of Subpart 6S based on EPA's Interpretation Letter. These two actions emphasize the binding effect of EPA's action. Moreover, it was foreseeable that EPA's expansion of Subpart 6S to previously unregulated entities would lead to these binding effects. Because EPA's action expresses a change in the scope of the applicability of Subpart 6S with binding effects, EPA must initiate formal rulemaking under the APA before regulating facilities under Subpart 6S that were previously

exempt. It is not appropriate for EPA to give each state discretion to determine whether a particular source is subject to a NESHAP or New Source Performance Standard.

**b. The Clean Air Act**

To regulate HAPs emissions from colored art glass manufacturers with periodic furnaces, EPA must first develop an emissions inventory to determine whether to regulate this subcategory. 42 U.S.C. § 7412(c)(3) and § 7412(k). EPA must then rely on this emissions inventory to develop emissions standards for this subcategory. 42 U.S.C. § 7412(d). These emission standards must be based on the maximum achievable control technology (MACT) for sources in this subcategory, as determined by the emissions inventory. *Id.* at § 7412(d)(2). To determine MACT for small glass manufacturers with periodic furnaces, EPA must take into consideration “the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies.” *Id.* The final emission standards from this process may be different than the standards EPA has developed for large glass companies operating continuous furnaces.

When EPA gathered information about possible HAP emissions in the glass manufacturing industry for its emissions inventory, EPA admits that it only gathered information from large-scale glass manufacturing operations. *See* 72 Fed. Reg. 73180, 73186 (“After reviewing the emissions inventory in support of the listing decisions ... we have concluded that the glass manufacturing area source category was listed based on emissions from relatively large manufacturing plants that operated continuous glass furnaces.”) EPA did not collect emissions data from colored art glass manufacturers. *See id.* EPA cannot simply issue an Interpretation Letter that Subpart 6S now applies to these manufacturers because EPA has not met its burden in demonstrating that it took into account these sources when developing emissions limitation under Subpart 6S. *See Michigan v. EPA*, 135 S. Ct. 2699 (2015) (holding EPA must make the required findings under the CAA including taking cost into consideration). In order to regulate colored art glass manufacturers with periodic furnaces previously unregulated under Subpart 6S, EPA must follow the procedures required by the CAA.

**3. EPA should withdraw the Interpretation Letter because it may result in inconsistent application of Subpart 6S.**

The regulations promulgated under the CAA direct EPA to “assure fair and uniform application by all Regional Offices of the criteria, procedures, and policies employed in implementing and enforcing the Act.” 40 CFR § 56.3. As a result of the Interpretation Letter, Subpart 6S may not be uniformly applied to colored art glass manufacturers across the country. While EPA’s Interpretation Letter attempts to avoid controversy by stating that EPA interpretation is “a non-binding interpretation and should not be considered an applicability determination,” DEQ is relying on this Interpretation Letter and has taken enforcement action.

D. McLerran, E. Messina  
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To Bullseye's knowledge, Oregon is the only state currently applying Subpart 6S to colored art glass manufacturers such as Bullseye. This puts Bullseye at a competitive disadvantage. EPA should act to ensure that Subpart 6S is consistently applied by withdrawing its Interpretation Letter and initiating formal rulemaking, in the event EPA decides to regulate periodic or pot furnaces.

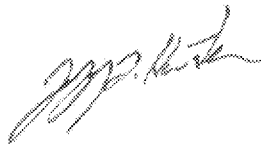
#### **D. Conclusion**

In conclusion, EPA's declaration that Subpart 6S applies to Bullseye's periodic furnaces is a reversal of its long-standing position that Subpart 6S only applies to large furnaces that continuously melt and produce glass. In response to specific comments made by Bullseye and other colored art glass manufacturers, EPA concluded that periodic furnaces would not be regulated under Subpart 6S. 72 Fed. Reg. 73180, 73186 (Dec. 26, 2007). Nowhere in the rule did EPA conclude or even suggest that periodic furnaces that were continuously on would qualify as a continuous furnace under the rule.

The Interpretation Letter contains a significant new interpretation of the rule with national implications. Bullseye requests that EPA withdraw the Interpretation Letter and confirm that Subpart 6S, as currently written, only applies to furnaces that continuously melt and produce glass. If EPA believes that periodic furnaces that are continuously on should be covered under the rule, then EPA should undergo formal rulemaking consistent with Section 112(d) of the CAA and the APA.

We respectfully request that EPA promptly review this letter and withdraw the Interpretation Letter sent to DEQ. We appreciate EPA's cooperation. Please call if you have any questions or require additional information.

Sincerely,



Jeffrey L. Hunter

cc: Janis Hastings, Director of Office of Air Waste and Toxics-Region 10 (via email only)  
Katie McClintock, Region 10 (via email only)  
Kristen Leffers, Region 10 (via email only)  
L. Feldon, DEQ (via email only)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

APR 12 2016

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

Ms. Joni Hammond, Deputy Director  
Oregon Department of Environmental Quality  
811 SW Sixth Avenue  
Portland, OR 97204

Dear Ms. Hammond:

On March 9, 2016, you requested that the Environmental Protection Agency (EPA) provide a regulatory interpretation regarding the applicability of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Glass Manufacturing Area Sources, 40 CFR, Part 63, Subpart SSSSSS (Subpart SSSSSS) to tank furnaces at art glass manufacturers in Portland, Oregon. Based on your description of the operation of these tank furnaces, and information gathered by EPA, we believe that these furnaces would be subject to Subpart SSSSSS, absent any relevant considerations not mentioned in your letter. Our understanding of the facts and our reasoning are set out below.

As you described in your letter, although there are three criteria for whether a furnace is an affected facility, you are only seeking guidance on the criteria that the furnace is a "continuous furnace." Our definition of "continuous furnace" is "a glass manufacturing furnace that operates continuously except during periods of maintenance, malfunction, control device installation, reconstruction, or rebuilding." (40 CFR, §63.11459)

The day tanks you described at Uroboros and Bullseye are similar to those used at other facilities in the colored glass industry. They are refractory furnaces that melt glass in a batch process but are continuously operated. Once a furnace is built and brought up to temperature, it is continuously operated at around 2000° F or higher until the end of the furnace's refractory life when it is cooled to ambient temperatures and rebricked prior to the start of a new campaign. During the life of the furnace, glass is produced in 24 hour melt cycles and generally on a production schedule (either part time or full time). During glass production, the furnaces operate generally around 2500° F. Depending on the facility, the furnaces may not hold or melt glass for a day or two on the weekend or intermittently based on demand. They also may idle to closer to 2000° F during holidays or production breaks. However, natural gas is fired and the furnace stays at a high temperature at all times, with only the exemptions outlined in the definition of "continuous furnace" in Subpart SSSSSS.

In response to stained glass company commenters on Subpart SSSSSS who indicated they operate "small periodic furnaces", the EPA stated:

*Therefore, we have revised § 63.11448 to specify that periodic or pot furnaces are not subject to the final Glass Manufacturing Area Source NESHAP. We believe this revision will address most of the concerns of the stained glass manufacturing sector as well as other sectors and organizations, such as artisans, schools, studios, and other small facilities that produce glass using periodic furnaces. 72 FR 73186 (December 26, 2007)*

In choosing to exempt non-continuous furnaces, the EPA focused on their operation being periodic. A furnace that shuts down seasonally or is only operated for portions of the year would not be considered a continuous furnace. This revision was meant to address the concerns of small operators or artisanal shops which may turn kilns/furnaces on and off regularly. The furnaces you describe are kept hot (operated) for a year or more between rebrickings and produce glass on a routine schedule.

Consequently, based on the information provided and our understanding of operations at the facilities in question, we believe that, consistent with the intent of the definitions in Subpart SSSSSS, the art glass tank furnaces in question are "continuous furnaces" and are therefore subject to Subpart SSSSSS.

We recognize that there may be some confusion within the art glass industry about this rule. As a result, we encourage you to work with affected companies to ensure that they take appropriate steps to comply with the rule following today's clarification.

Please note that this response is a non-binding regulatory interpretation based on the information provided by Oregon Department of Environmental Quality (Oregon DEQ) and information gathered by EPA. This response should not be considered an applicability determination, nor does it represent final Agency action, since it is not in response to a facility request. Oregon DEQ may, in its discretion, consider this interpretation and any other relevant information it has in determining the applicability of Subpart SSSSSS to any facilities in its state.

If you have further questions, please contact Patrick Yellin of my staff at (202) 564-2970, or [yellin.patrick@epa.gov](mailto:yellin.patrick@epa.gov).

Sincerely,



Edward J. Messina, Director  
Monitoring, Assistance, and Media Programs Division  
Office of Compliance



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

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April 13, 2016

Eric Durrin, Vice President/Controller  
Bullseye Glass Co.  
3722 SE 21<sup>st</sup> Avenue  
Portland, OR 97202

Re: Applicability of 40 CFR Part 63 Subpart SSSSSS

Eric,

DEQ recently requested clarification and interpretation from EPA on the applicability of the National Emissions Standards of Hazardous Air Pollutants (NESHAP) for Glass Manufacturing Area Sources, 40 CFR, Part 63, Subpart SSSSSS to facilities with equipment and operations comparable to those at Bullseye Glass.

DEQ requested this clarification as a result of recent investigations and new understanding and information about your operations. Subpart SSSSSS controls air emissions from glass manufacturing plants that are area sources that emit hazardous air pollutant metals (arsenic, cadmium, chromium, lead, manganese, and nickel) and which meet the relevant applicability criteria outlined in the rule. DEQ requested clarification from EPA to ensure that the appropriate regulations are being applied to your facility.

### Is Bullseye subject?

The relevant applicability criteria in the rule state that a facility is subject to the subpart if they are an “*area source of hazardous air pollutant (HAP) emissions*” and meet the criteria detailed in 40 CFR §63.11448. There are three criteria in assessing applicability of the subpart, the two most relevant to Bullseye are:

1. §63.11448(a) *A glass manufacturing facility is a plant site that manufactures flat glass ... by melting a mixture of raw materials ... to produce molten glass and form the molten glass into sheets, containers, or other shapes.*
2. §63.11448(c) *[A] glass manufacturing facility [that] uses one or more continuous furnaces to produce glass that contains compounds of one or more glass manufacturing metal HAP ... as raw materials in a glass manufacturing batch formulation.*

Additionally, and of relevance to your facility and DEQ’s request for clarification, Subpart SSSSSS defines some of the critical terms used in determining applicability. Specifically, in §63.11459 the subpart defines that: “*continuous furnace means a glass manufacturing furnace*

*that operates continuously except during periods of maintenance, malfunction, control device installation, reconstruction, or rebuilding”.*

Under the definitions of the subpart Bullseye meets the applicability test under §63.11448(a). Bullseye manufactures flat glass by melting a mixture of raw materials (as defined in §63.11459) and forms the molten glass into sheets, containers, or other shapes. That Bullseye meets this definition is unambiguous.

In assessing the applicability based on §63.11448(c), DEQ had previously stated, in the Review Report for Bullseye’s current permit, that the subpart did not apply to Bullseye because “*the regulation applies only to continuous furnaces. Bullseye operates only periodic furnaces*”. EPA clarified, in part, that Bullseye operates “*refractory furnaces that melt glass in a batch process but are **continuously** operated*” (emphasis added) and that, though glass product is produced in batches, “*natural gas is fired and the furnace stays at a high temperature at all times, with only the exemptions outlined in the definition of ‘continuous furnace’ in Subpart SSSSSS*”.

Based on EPA’s clarification and other information about Bullseye’s operations, DEQ has revised its previous interpretation and has determined that Subpart SSSSSS applies to Bullseye.

#### **Which furnaces are subject to requirements in Subpart SSSSSS?**

As part of this letter DEQ is requesting information to identify which furnaces at Bullseye are subject to the provisions; that request is detailed in following sections. Based on the current information DEQ has regarding the operations at Bullseye, DEQ is asserting that some furnaces at Bullseye are subject to the provisions of the subpart. In 40 CFR §63.11449, the subpart is clear that “*existing or new affected*” furnaces located at a glass manufacturing facility are required to comply with the provisions of the subpart if they meet the criteria below:

1. §63.11449(a)(1) *The furnace is a continuous furnace, as defined in §63.11459.*
2. §63.11449(a)(2) *The furnace is charged with compounds of one or more glass manufacturing metal HAP as raw materials.*
3. §63.11449(a)(3) *The furnace is used to produce glass, which contains one or more of the glass manufacturing metal HAP as raw materials, at a rate of at least 45 Mg/yr (50 tpy).*

The primary production furnaces at Bullseye meet the definition of continuous furnace, as clarified by EPA and discussed in the previous section. In assessing (2) and (3) above, DEQ has confirmed through multiple inspections and a review of the records provided by Bullseye that many of the furnaces are “*charged with compounds of ... glass manufacturing HAP(s) as raw materials*”; and that production from one or more of those furnaces has met or exceeded a rate of at least 50 tons per year (tpy).

40 CFR §63.11449 goes on to describe which parts of the plant are covered by the subpart. DEQ has detailed those provisions and our responses below:

*§63.11449 (b) A furnace that is a research and development process unit, as defined in §63.11459, is not an affected furnace under this subpart.*

Research and development, as applied in subpart SSSSSS, means a “unit whose purpose is to conduct research and development for new processes and products and is not engaged in the manufacture of products for commercial sale, except in a de minimis manner”. The furnaces at Bullseye are engaged in production to create saleable products as evidenced by records, comments and published materials.

*§63.11449 (c) An affected source is an existing source if you commenced construction or reconstruction of the affected source on or before September 20, 2007.*

*§63.11449 (d) An affected source is a new source if you commenced construction or reconstruction of the affected source after September 20, 2007.*

DEQ does not have complete records detailing comprehensively which furnaces at Bullseye commenced construction or reconstruction on or before September 20, 2007; this information is needed to determine which of the provisions of Subpart SSSSSS individual furnaces are subject to. DEQ will be requesting additional information to confirm which furnaces this condition is applicable to.

*§63.11449 (e) If you own or operate an area source subject to this subpart, you must obtain a permit under 40 CFR part 70 or 40 CFR part 71.*

This requirement of the subpart does not describe applicability criteria but instead outlines the obligations incumbent on an owner or operator of a subject source to obtain a Title V permit as required under either 40 CFR part 70 or 40 CFR part 71.

Based on the information DEQ has about your furnaces and operations, DEQ has concluded that you operate at least one furnace, and likely multiple furnaces, that meet the applicability criteria of the rule and so are subject to the requirements of the subpart.

### **Initial request for information**

Under Oregon Administrative Rule (OAR) 340-214-0110, DEQ is authorized to reasonably require any and all information for the purpose of regulating stationary sources. In accordance with this authority DEQ is requesting the following information be provided in a reasonably timely manner but no later than 5 p.m. on April 18<sup>th</sup>, 2016:

A list of furnaces at Bullseye, with unique identifiers for each furnace which identifies:

1. Each furnace which is currently used in a manner that it is charged with compounds of one or more glass manufacturing metal HAP as raw materials.
2. Annual (12 month period) glass production capacity for each furnace.
3. Annual (12 month period) glass production capacity for each furnace that uses metal HAPs as a raw ingredient.
4. Each furnace which has, at any point since December 26, 2007, been used in a manner that it was charged with compounds of one or more glass manufacturing metal HAP as raw materials.
5. The current glass production levels, in tons per year (12 month period) of each furnace that produces glass containing metal HAPs.

6. The glass production levels, in tons per year (12 month period) of each furnace that produced glass containing metal HAPs since December 2007.
7. Each furnace that Bullseye asserts meets the definition of research and development process unit, as defined in §63.11459.
8. The date of construction for each of the currently existing furnaces.
9. The date of reconstruction, if applicable, for each of the currently existing furnaces.

Reconstruction as defined in 40 CFR 63.2:

*Reconstruction [...] means the replacement of components of an affected or a previously nonaffected source to such an extent that:*

- (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source; and*
- (2) It is technologically and economically feasible for the reconstructed source to meet the relevant standard(s) established by the Administrator (or a State) pursuant to section 112 of the Act. Upon reconstruction, an affected source, or a stationary source that becomes an affected source, is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.*

The above information will provide DEQ the information we need to specify what requirements apply to which furnaces and what Bullseye must do to be in full compliance.

As stated above, DEQ has revised our determination about the applicability of 40 CFR, Part 63, Subpart SSSSSS, in light of EPA's clarification, and has concluded that Bullseye is subject to the rule. We look forward to receiving the information requested above to determine which furnaces are subject to which requirements of the subpart; and to support actions moving forward which will ensure that Bullseye is in full compliance with all applicable regulations.

If you have any questions please contact me at 503-229-5160 or [ebersole.gerald@deq.state.or.us](mailto:ebersole.gerald@deq.state.or.us).

Sincerely,



Gerald C Ebersole

Interim Air Quality Manager  
Northwest Region

cc: Leah Feldon, Oregon DEQ (via email)  
Jaclyn Palermo, Oregon DEQ (via email)  
Nina DeConcini, Oregon DEQ (via email)  
Joni Hammond, Oregon DEQ (via email)  
Katie McClintock, US EPA (via email)  
Paul Koprowski, US EPA (via email)

Enclosures: DEQ clarification request to EPA  
EPA response to DEQ



# Oregon

Kate Brown, Governor

**Department of Environmental Quality****Northwest Region**

700 NE Multnomah Street, Suite 600

Portland, OR 97232

(503) 229-5263

FAX (503) 229-6945

TTY 711

April 25, 2016

Mr. Eric Durrin  
Bullseye Glass Co.  
3722 SE 21<sup>st</sup> Avenue  
Portland, OR 97202

Re: Pre-Enforcement Notice  
Bullseye Glass Co.  
PEN-POR-AQ-2016-PEN-1526  
File No. 26-3135  
AQ-Multnomah Co.

Dear Mr. Durrin,

DEQ recently requested clarification and interpretation from EPA on the applicability of the National Emissions Standards of Hazardous Air Pollutants (NESHAP) for Glass Manufacturing Area Sources, 40 CFR, Part 63, Subpart SSSSSS (Subpart 6S) to facilities with equipment and operations comparable to those at Bullseye. Based on EPA's response, DEQ concluded that Bullseye is subject to Subpart 6S.

Subpart 6S has dual applicability criteria. The first set of applicability criteria in section 63.11448 of Subpart 6S are used to determine if a facility is subject to Subpart 6S. The second set of applicability criteria in section 63.11449 of Subpart 6S are used to determine which, if any, furnaces at a facility are subject to the requirements of Subpart 6S. It is possible to meet the first criteria and be subject to Subpart 6S, while some or all furnaces do not meet the second set of criteria and are therefore not required to meet any requirements. However, if a facility is subject to Subpart 6S, section 63.11449 requires that the facility obtain a Title V permit (referred to as a part 70 permit in Subpart 6S, section 63.11449(e)).

Because your facility is subject to Subpart 6S, your facility was required to apply for a Title V permit. The compliance date for your facility was December 28, 2009. Under Oregon Administrative Rule (OAR) 340-218-0040(1)(a)(A), you were required to apply for a Title V permit by December 28, 2010. Since you did not apply for a Title V permit, your facility is in violation of 40 CFR 63.11449(e) and OAR 340-218-0040(1)(a)(A).

By sending you this Pre-enforcement Notice, DEQ has initiated enforcement action for the violation described above. It is possible that your facility has furnaces that meet the applicability criteria in section 63.11449 of Subpart 6S. If that is the case, your facility is also in violation of the applicable sections of Subpart 6S. DEQ has requested information from you about the furnaces at your facility, and will use that information to determine if any furnaces meet the applicability criteria in section 63.11449 of Subpart 6S.

VIOLATION:

- (1) Failing to submit a timely application for an Oregon Title V Operating Permit as required by OAR 340-218-0040(1)(a)(A). (A Class II violation per OAR 340-012-0053(2)).

Class I violations are considered to be the most serious violations; Class III violations are the least serious.

The violation cited above is being referred to the Department's Office of Compliance and Enforcement for formal enforcement action. Formal enforcement action may result in assessment of civil penalties and/or a Department order. DEQ proposes to enter into a Mutual Agreement and Order (MAO) with you to address and resolve the existing violation and future potential violations. The MAO will include an agreed upon compliance schedule and operating conditions until a Title V permit is issued to Bullseye.

If you believe any of the facts in this Pre-Enforcement Notice are in error, you may provide written information to me at the address shown at the top of the letter. DEQ will consider new information you submit and take appropriate action.

DEQ endeavors to assist you in your compliance efforts. Should you have any questions about the content of this letter, please feel free to contact me in writing or by phone at 503-229-5053.

Sincerely,



David Kauth  
DEQ/Northwest Region Office

cc: Leah Feldon, OCE, DEQ